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Report of the Joint Special Committee on...

Boston

1918

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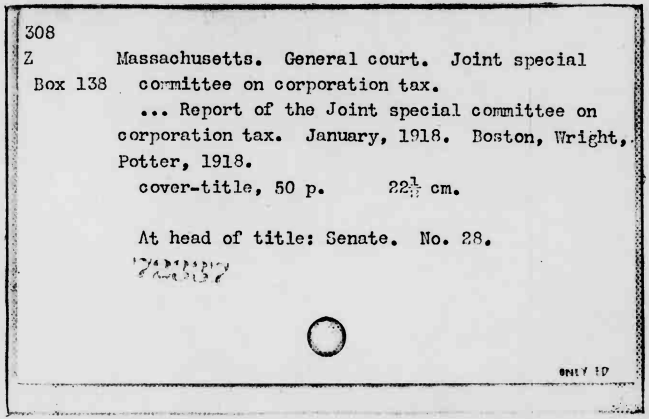
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REPORT

OF THE

JOINT SPECIAL COMMITTEE

ON

CORPORATION TAX.

JANUARY, 1918.

BOSTON:
WRIGHT & POTTER PRINTING CO., STATE PRINTERS,
32 DERNE STREET.
1918.

Members of the Committee.

Hon. CHARLES L. GIFFORD of Barnstable, *Chairman.*
Hon. E. HOWARD PERLEY of Salem.
Hon. JAMES P. TIMILTY of Boston.

On the Part of the Senate.

Rep. CHAS. F. ROWLEY of Brookline, *House Chairman.*
Rep. JOSEPH O. KNOX of Somerville.
Rep. ARTHUR E. BURR of Boston.
Rep. FRANCIS W. HILL of Saugus.
Rep. WARREN E. TARBELL of East Brookfield.
Rep. JOHN J. KEARNEY of Boston.

On the Part of the House.

ROBERT T. BRADY, *Clerk of the Committee.*

The Commonwealth of Massachusetts.

BOSTON, Jan. 3, 1918.

To the General Court of Massachusetts.

In accordance with an order adopted by the Senate and the House of Representatives May 22, 1917, the Joint Special Committee on Corporation Tax transmits herewith its report.

REPORT OF THE JOINT SPECIAL COMMITTEE ON CORPORATION TAX.

ORDER UNDER WHICH IT WAS APPOINTED. — MATTERS CONSIDERED. — SCOPE OF THE INVESTIGATION.

The committee was appointed in accordance with an order adopted by the Senate and House of Representatives in concurrence, May 22, 1917, as follows: —

Ordered, That a joint special committee, to consist of three members of the Senate and six members of the House of Representatives, be appointed to sit during the recess of the General Court to investigate and to consider the working of the existing laws of the Commonwealth relating to the taxation of corporations, and to recommend such changes in the said laws as it shall deem necessary or expedient. The committee shall also investigate and consider the methods now employed by the Commonwealth in taxing tangible personal property, and also the desirability of continuing to exempt from taxation the bonds and notes of the Commonwealth and the political subdivisions thereof. The committee shall report its findings to the next General Court, together with drafts of such laws as it may recommend; and it may report in print. Three hundred and fifty copies of the report shall be reserved for the use of the General Court, and the remaining copies shall be distributed as the committee shall deem advisable. Not more than twenty-five hundred copies of such report shall be printed, and any surplus copies shall be deposited in the legislative document room for distribution by the sergeant-at-arms. The committee shall have a room or rooms in the State House assigned for its use; shall give such public hearings as it may deem necessary; may employ such assistants, clerical or otherwise, as it may require; and shall receive for compensation, and for assistants, travel and other expenses, such sums as shall be allowed by the Governor and Council.

The committee met June 12 for organization, and elected Robert T. Brady clerk.

As a result of conferences with officials of the Tax Commissioner's office the committee determined the various classes of

corporations to be investigated and the order of their prominence, for the purposes of its work, as follows: —

1. Domestic business corporations.
2. Foreign business corporations.
3. Trust companies.
4. National banks.
5. Insurance companies.
6. Public utilities corporations.

It was suggested by various students of the problem that the work involved in a careful consideration of the laws relating to the taxation of domestic and foreign business corporations was so great that the committee would find it impossible, in the limited time allowed for its investigation, to attempt a solution of the other questions which came within the scope of the order under which it was appointed.

The committee approached its work, however, with a view to covering every phase of the situation contemplated in the order of the Legislature. Committee hearings were advertised extensively in the newspapers of the State, boards of trade and other business organizations were notified of the work undertaken, and special invitations were extended to various persons known to have special knowledge of or peculiar interest in the taxation of corporations.

The committee presents in this report recommendations for changes in the system of taxation of domestic and foreign business corporations, and for amendment of the existing law relating to the taxation of trust companies.

The vast amount of work involved in the study of these three classes of corporations has necessitated more than thirty public hearings and almost daily executive sessions for the past month, during which the committee has had the benefit of opinions from some of the most noted taxation students in the State and country.

The committee makes no recommendation herein concerning the taxation of public utilities corporations. A special committee appointed under act of the Legislature of 1917 to study the street railway problem in Massachusetts has considered the taxation question so far as it applies to that class of corporations. A desire to avoid duplication of work, and to prevent overlapping of the functions of the street railway committee, has prompted this committee to forego consideration of the taxation of public utility corporations at this time. Moreover, the committee believes that public utility corporation taxation in itself needs more extended and specific study than can be given to it in connection with the other matters treated in this report.

The committee has considered the taxation of national banks and insurance companies, but here again the questions involved are numerous and intricate. and there has not been the opportunity to make as complete an investigation as the committee believes necessary to constructive recommendations relating to these corporations.

In its work the committee has received valuable assistance from the Tax Commissioner of the Commonwealth. A representative of his department has been in attendance at every session of the committee, and opportunity has been given for liberal use of the department's facilities in the conduct of the investigation. The work of Deputy Commissioner John W. Locke is worthy of special commendation, and the committee recognizes that it owes much to him for the successful completion of its work.

Charles J. Bullock, professor of economics at Harvard University, recognized throughout the country as one of the most thorough students of taxation, has been employed by the committee as expert adviser. The value of his work cannot be measured by the compensation allowed for his employment. His knowledge of the situation in the other States has brought to the committee authoritative information upon which to base its recommendations. His expert judgment of the Massachusetts situation, from the point of view of the welfare of the Commonwealth and the needs of the business interests, has been of great assistance in formulating what the committee believes to be a logical system of corporate taxation.

The committee wishes to emphasize that every effort has been made to interest business men in Massachusetts in its work. Every board of trade, chamber of commerce and merchants' association was notified of the matters under considera-

tion, and requested to have representatives at the public hearings. Special invitations were extended from time to time to persons representing corporations to appear at stated times with suggestions bearing on certain phases of the investigation.

Valuable assistance has been rendered by the taxation experts of many corporations, and the committee is confident that full weight has been given in its deliberations to the effect of the legislation proposed herein upon Massachusetts business.

Summary of Recommendations.

Drafts of bills are submitted herein for carrying out the committee's recommendations, which may be summarized as follows: —

Repeal of the present laws relating to the franchise tax of domestic and foreign business corporations, and the substitution therefor of a system of taxation based on the income of such corporations.

Amendment of the law relating to the taxation of trust companies so that every trust company shall pay a franchise tax at least equal to two-fifths of 1 per cent. of its capital, surplus and undivided profits; providing also that the mortgage deduction allowed in determining the corporate excess shall be the average amount invested in mortgages throughout the year.

Further study of the taxation of insurance companies, national banks and public utility corporations.

If existing constitutional restrictions are removed, further investigation of the methods of taxing tangible personal property.

The Taxation of Domestic Business Corporations.

In respect to domestic business corporations the operation of the corporate franchise tax has long been unsatisfactory. In its present form the tax has finally produced so many inequalities and such great abuses as to make a change of the present law an absolute necessity.

Previous to 1903 domestic business corporations were taxed like other Massachusetts corporations under the system established in 1864. This system provided that the real estate and machinery of corporations should be subject to local taxation, and that a tax should then be levied by the State upon the value of the corporate franchise. The value of a franchise was determined by ascertaining the market value of the capital stock of the corporation, and deducting therefrom the value of the real estate and machinery subject to local taxation. The remainder thus determined, ordinarily called the corporate excess, was the basis upon which the franchise tax was levied by the State, and this tax was levied at the average rate of taxation prevailing in the cities and towns of the Commonwealth.

In the year 1902, complaint having arisen that the ordinary business corporation was overtaxed in Massachusetts, a commission was appointed to investigate the subject. After thorough investigation this commission recommended certain changes in the franchise tax which were designed to prevent double taxation of stocks of other Massachusetts corporations and of property subject to taxation outside this Commonwealth. The next year these recommendations were enacted into law, but the legislative committee on taxation which reported the proposed amendments added thereto another provision limiting the taxable corporate excess of domestic business corporations.

Since 1903, therefore, our law has not only granted such corporations relief from double taxation, but has contained a provision limiting the taxable corporate excess to an amount which, after making certain deductions, cannot exceed 120 per cent. of the value of the tangible property and taxable securities owned by such corporations. The deductions referred to are those which the law required to be made in determining the taxable corporate excess, and include the old deduction authorized since 1864 for real estate and machinery subject to taxation in the Commonwealth, and the new deductions authorized in 1903 for taxable property located outside the Commonwealth and for non-taxable securities.

From this law it has resulted that since 1903 the taxable corporate excess of many domestic business corporations has had to be determined by the following formula: To the total value of the tangible property and taxable securities owned by such corporations add 20 per cent.; then subtract the value of the real estate and machinery subject to local taxation in Massa-

chusetts, the value of property subject to taxation outside the Commonwealth, and the value of non-taxable securities. The remainder, if there is any, is the taxable corporate excess.

The first and most obvious effect of this limitation was to reduce the franchise tax upon many corporations which were extremely prosperous, the capital stock of which naturally had a high value. Prior to 1903 the higher the value of the capital stock the greater the corporate excess tended to be; but under the new law an arbitrary line was drawn above which the taxable corporate excess cannot rise, no matter how prosperous the corporation may be. The inevitable result was the reduction of the taxes levied upon some of the most prosperous corporations.

A second effect, hardly less obvious, has been that the amount of tax which can be levied under the maximum clause depends upon the kind of assets the company possesses. Only tangible property and taxable securities are taken into account in determining the 120 per cent. figure, intangible property and non-taxable securities being wholly excluded. It therefore follows that a concern owning a comparatively large amount of tangible property and taxable securities has a high maximum, while a concern the assets of which consist largely of intangible property and non-taxable securities has a very low one. It also results that any concern which is in a position to do so can, if it desires, so adjust its affairs as to reduce greatly the amount of its franchise tax. In lines of business where it is unnecessary to own any considerable amount of tangible property the maximum limit is sometimes 120 per cent. of the value of a few office fixtures. If any maximum whatever ought to be fixed by the law it should be one which would operate with equality upon different classes of corporations, and would not offer opportunity for the manipulation of assets with a view to reducing the corporate franchise tax.

A third and peculiarly vicious effect of the present maximum limit is that, although non-taxable securities are not included in determining the 120 per cent. figure, they are included in the deductions which must be made from that figure. The result is that in effect a concern owning non-taxable property receives a double deduction.

As matters stand to-day there is no reason why many domestic business corporations need pay any franchise tax whatever except the very low minimum tax of one-tenth of 1 per cent. of the market value of the capital stock; and even this is wiped out if a corporation pays a comparatively small amount of local taxes. In its operation on domestic business corporations our corporate franchise tax is to-day unjust in principle, arbitrary, illogical and contradictory in some of its detailed provisions, flagrantly unequal in its incidence, and honeycombed with abuses which make it discreditable to the Commonwealth.

In his report for 1905, soon after the maximum limitation had gone into operation, the Tax Commissioner called attention to "the unequal and unjust application of the law." He showed that of two corporations having the same franchise value one was taxed twenty times as much as the other, and pointed out that so long as a company's tangible assets or taxable securities remain constant its other assets may be increased indefinitely without increasing the tax.[1]

In 1911 the commissioner again called attention to the great inequality prevailing in the taxation of domestic business corporations, and showed that the maximum clause was reducing greatly the taxes paid by many of the most prosperous concerns. In every year since then he has felt obliged to call attention to this subject, and his report for 1916 sets forth in considerable detail the flagrant inequalities that result from the existing law.

The Special Commission on Taxation, appointed under chapter 134 of the Resolves of 1915, pointed out the inequitable working of the 120 per cent. clause, and recommended its repeal. It also called attention to the fact that Massachusetts corporations are sometimes organized as subsidiaries of foreign corporations, with nominal capital stock and a large indebtedness to the parent corporations, the necessary result being that, after allowance is made for indebtedness, the franchise of the subsidiary corporation has only an insignificant value, and the corporation escapes with a nominal tax.[2]

In the year 1917 corporate franchise taxes were assessed upon 8,001 domestic business corporations, of which 2,540 came

[1] Report of Tax Commissioner, 1905, p. 27.
[2] Report of the Special Commission on Taxation, pp. 24-31.

under the operation of the maximum clause. The corporate excess of these 2,540 corporations, without the maximum limitation, would have been $237,789,000; under that limitation, however, it was reduced to $116,930,000, with the result that the taxes paid by these favored corporations were reduced by $2,353,000. The significance of these figures will be appreciated when it is stated that the total franchise taxes paid by domestic business corporations in 1917 amounted to $6,932,000. It will be seen that the tax exemption of $2,353,000 granted to 2,540 favored corporations amounted to somewhat more than one-third of the total taxes levied upon all domestic business corporations. If any limitation is to be imposed, it should be under some equal and uniform method which would not diminish by over 50 per cent. the taxes paid by favored corporations, many of them extremely prosperous, while affording no relief to the 5,461 others, some of which are far from prosperous but nevertheless are very heavily taxed.

It is probable that the inequalities attending the operation of the present law are even greater than these figures disclose. The most prosperous concerns frequently have no indebtedness and carry their assets upon their books at extremely conservative figures. Less prosperous companies, however, are constantly obliged to borrow money, and are therefore compelled to carry their assets upon their books at their full value. Under such conditions it is obvious that returns made to the Tax Commissioner by these two classes of corporations, while accurately stating conditions shown by their books, lead to unequal valuations of the corporate franchises and to relatively heavier taxation of the less prosperous companies.

Another result of the maximum limitation is that competing concerns in the same line of business are most unequally taxed. In 1915 the aggregate value of the capital stock of 11 department stores engaged in the same general line of business in the city of Boston was $15,643,000, while the amount upon which taxes were actually assessed was only $8,077,000, thus leaving untaxed the amount of $7,566,000. It appeared, however, that only 3 of these stores benefited by the maximum provision, and that the 8 others were compelled to pay upon a full valuation. The result was that the exemption, amounting to $7,566,000,

accrued wholly to the benefit of the three favored stores, which were relieved of taxes amounting to $140,348.[1]

It further appears that the relief from taxation granted to the favored corporations is very unequally distributed among them. The report of the Tax Commissioner for 1916 (page 11) shows that 2,292 companies which came under the operation of the maximum clause benefited to the extent of $1,907,000, but of this amount not less than $404,000 was remitted to nine corporations, while the remaining 2,283 companies were benefited to the extent of $1,503,000.

Not only is the amount of the exemption granted to favored corporations large, but it appears to be on the increase. In 1911 the value of the capital stock of 1,661 companies which came under the operation of the maximum clause was $127,076,000, while the maximum value upon which the franchise tax would be imposed was $64,091,000, the amount of taxes thus remitted being $1,129,000. In 1917, however, 2,540 corporations came under the operation of the maximum clause. Their capital stock was valued at $237,789,000, the maximum value upon which the franchise tax could be assessed was $116,930,000, and the taxes remitted to such corporations amounted to $2,353,000. As matters now stand there is no reason why the tendency revealed by these figures should not continue, and unless the law is changed it is obvious that the operation of the corporate franchise tax upon domestic business corporations must become increasingly unequal.

Quite apart from the inequalities resulting from the act of 1903, there is a further and more serious structural defect in the business corporation tax. The law has always provided that the tax should be levied upon the value of the capital stock, indebtedness having always been disregarded. This has been upon the theory that the creditor was taxable if he was an inhabitant of Massachusetts. In practice, however, the creditor, even though he was a taxable inhabitant, generally evaded taxation, and in many cases the borrowed capital was secured from persons or financial corporations who were not taxable thereon. The result of leaving out of account the indebtedness of the corporation has been that companies owning real estate and ma-

[1] Report of the Tax Commissioner, 1916, p. 10.

chinery, and since 1903 non-taxable securities, frequently paid no franchise tax whatever. A mercantile concern having a million dollars of taxable personal property employed in its business, and paying before incorporation a local tax amounting to $15,000, could incorporate and at the same time purchase with borrowed money the building which it had been renting for use in its business. Assuming such building to cost a million dollars, the concern after incorporating would have two million of assets and one million of indebtedness, its net assets, therefore, standing at $1,000,000. From the net assets of $1,000,000 so determined, the Tax Commissioner, under the law, was obliged to deduct the value of the building amounting to $1,000,000, with the result that no taxable corporate excess remained. In such a case the next step would be to compute the minimum tax of one-tenth of 1 per cent., which amounted to $1,000 for such a company, but from this it would be necessary to subtract the local taxes upon the real estate, amounting to some $15,000, which would leave no minimum tax whatever to be paid. This illustration, based upon actual fact, shows the absurd results which follow from basing a tax merely upon the capital stock and then allowing deductions for property that may have been purchased with borrowed money.

It is easy to understand how it has come about that more than one-fourth of our domestic business corporations now pay no franchise tax whatever. In 1911 there were 7,498 domestic business corporations of which 4,960 were assessed for a franchise tax, leaving 2,538 corporations which paid no such tax. In 1917, however, of the 10,975 domestic business corporations only 8,001 paid any franchise tax, leaving 2,974 corporations which paid no tax, except such as might be payable locally in respect to real estate and machinery. These 2,974 exempted corporations included many large and prosperous concerns which, by incorporating, had made their shares of capital stock exempt from taxation upon the theory that they were paying a corporate franchise tax, and then, by borrowing a large part of their capital, or otherwise adjusting their affairs, had contrived to pay no franchise tax whatever. Criticism is not here directed against such corporations, which merely took advantage of the opportunities offered by the law, but it is obvious that the law

which permits such absurd conditions to exist is open to the severest criticism.

During the hearings held by the committee no one has come forward to defend on principle the conditions above set forth. In behalf of the corporation law enacted in 1903 it can indeed be said that its enactment was followed by a marked increase of the corporations chartered in Massachusetts, and that for a time at least the State may have derived benefit therefrom; but it is erroneous to attribute the increased number of incorporations wholly to the taxation provisions of the act of 1903, since the other changes introduced by the law contributed materially to the result. It is now clear, however, that the limitations upon the corporate franchise tax imposed by the act of 1903 have produced intolerable results, and the committee is of the opinion that the State can no longer ignore or neglect the conditions which its investigation has disclosed. We therefore are led to the conclusion that the law of 1903 should immediately be amended or repealed.

The first remedy which suggests itself is the mere repeal of the 120 per cent. clause. That provision of the law in the year 1917 resulted in the loss to the Commonwealth of $2,353,000 of corporate franchise taxes by exemptions, the benefit of which was distributed most unequally to 2,540 out of a total of 8,001 corporations assessed. This is the least change which should be made in the law if we are to retain the idea of levying a franchise tax upon the so-called corporate excess. If it is suggested that the repeal of the maximum clause will impose too heavy burdens upon our industries, the answer is that if the Legislature believes that to be true it can reduce the rate of the corporate franchise tax and thereby give relief to all domestic business corporations rather than to a favored minority. In 1917 the corporate franchise tax yielded $6,932,000, and would have yielded $9,285,000 without the maximum limitation. It is obvious that in that year the rate of the corporate franchise tax could have been reduced by approximately one-fourth, and that the tax would still have yielded as much revenue as the Commonwealth actually received. The committee, however, does not recommend such action because it believes that there are other defects in the whole system of corporate excess taxation,

and that if the present law is to be changed it would be much better for the Commonwealth to adopt a different method of taxation.

The committee is of the opinion that no attempt to patch up the present law will result in a permanent solution of the problem of taxing domestic business corporations. The corporate franchise tax in its original form served a useful purpose in its day, and undoubtedly worked much better than the methods employed in taxing corporations prior to 1864. It is, however, far inferior to another method of taxing corporations which is now coming into use in several States, and in our opinion cannot be amended in any manner that will make it equal to the other method. This method is that of taxing corporations upon their income.

In 1909 the Federal government levied an excise tax upon the net income of corporations, which is now a part of the Federal income tax. In 1912 Wisconsin introduced a corporation income tax as a part of her system of income taxation. Subsequently West Virginia, Connecticut, New York and some other States adopted corporation income taxes, so that it may be said that this form of taxation has been rapidly growing in favor.

Its advantages over any tax levied upon the value of capital stock are tolerably obvious. It distributes the burden of taxation according to earning power with much more accuracy and certainty than can any tax levied upon the appraised value of capital stock. It therefore conforms more nearly to the principle that taxation should be distributed in accordance with ability to pay. Prior to 1909 it would have been subject to the criticism that it imposed a new kind of tax to which corporations were never accustomed in the United States, but to-day, with the Federal income tax in operation, that objection no longer holds, and it is evident that, if we are to depart from a tax based upon capital stock, we can find no other form of taxation which will be upon the whole so convenient and practicable as a tax levied upon income. It is also to be observed that in 1916 this Commonwealth imposed a tax upon certain forms of income, and that it now possesses the machinery for administering the tax upon the income of corporations. In view of these considerations the committee has come to the conclusion that

domestic business corporations should forthwith be exempted from the existing tax upon corporate franchises, and should be made subject to a new franchise tax which should be imposed upon their income.

The committee submits herewith the draft of a bill imposing an excise tax upon the franchises of domestic business corporations, which shall be levied by the Tax Commissioner upon the net income received by such corporations from business carried on within the Commonwealth.

This bill defines net income substantially in the terms adopted by the Income Tax Act of 1916, and provides a method of determining the proportion of the income derived from business carried on within the Commonwealth. It also imposes a minimum tax upon corporations which do not return a substantial amount of income.

The proper rate of taxation to be imposed upon corporation incomes has been given careful consideration. The present is not the time for increasing to any great extent the total taxes upon our industries, and the committee has sought to devise a plan which, without increasing such taxation, will secure a more just and equal distribution of the corporate franchise tax. It has aimed, therefore, to determine upon a rate which will secure from domestic business corporations, as a class, approximately the same revenue as would be derived under the existing law. The revenue received under that law was $6,932,000 in 1917, an increase of $1,192,000 over the figure for 1916, which in turn exceeded by $1,453,000 the figure for 1915. This yield is probably abnormal, and may be expected to decrease very considerably if business activity presently declines as a result of the war, or greatly decreases after the war. Even though the present yield may be abnormally large, we believe that the proposed income tax should be levied at a rate that will produce in 1918 at least the present amount of revenue, in order to allow for the shrinkage that will probably follow the war. From data obtained at Washington it may be estimated that the income taxable under the proposed bill in 1918 will be somewhere between $100,000,000 and $120,000,000, and that a 5 per cent. tax will yield from $5,000,000 to $6,000,000. From the minimum tax proposed by this bill an additional revenue of

about $1,000,000 may be expected, so that the total revenue from the bill here proposed may be estimated at from $6,000,000 to $7,000,000.

Especial attention should be called to the provision made in section 15 of the proposed bill for the distribution of the revenue from the corporation income tax. Under the existing law the Commonwealth retains a proportion of the corporate franchise tax corresponding to the proportion of the capital stock owned by persons not residents of Massachusetts. In order to determine this proportion it is necessary to require corporations to file with the Tax Commissioner lists of stockholders and their addresses, and much clerical labor is involved in securing the data for the distribution of the tax. The committee finds that during the period from 1910 to 1917, inclusive, the total taxes levied upon domestic business corporations amounted to $35,227,000, and that of this sum the Commonwealth retained $5,932,000. Thus, the proportion retained by the Commonwealth has amounted to approximately one-sixth of the total tax, and inspection of the figures for the several years shows that this proportion has not varied materially. It is clear, therefore, that the same average result would have been secured if the law had provided that one-sixth of the franchise tax paid by any domestic business corporation should be retained by the Commonwealth. It is clear, also, that the Tax Commissioner's office would have been saved considerable unnecessary clerical labor, and that the corporations would have been saved the expense of filing stockholders' lists, if the law had provided such a method of distribution. Since the returns of domestic business corporations are not open to public inspection, the filing of stockholders' lists serves no purpose except that of determining the amount of tax to be retained by the Commonwealth. The committee therefore proposes that the Commonwealth shall retain one-sixth of the income taxes levied upon domestic business corporations, which will give the same average result that has hitherto obtained, and will reduce the clerical labor required for the administration of the law. The five-sixths distributed among the cities and towns it is proposed to divide, as at present, according to the location of the tangible property of the corporations.

The administrative provisions of the bill follow in part the methods now used in the taxation of corporations, but in some points follow the methods adopted by the Income Tax Act of 1916. It is believed that the bill prescribes a method of taxation which will be found to be the most practicable and just form of corporation tax that can be devised.

The Taxation of Foreign Corporations.

Prior to 1903 foreign corporations doing business in this Commonwealth were not subject to a corporate excise tax. They paid merely a local tax upon their real estate, machinery and merchandise. In that year the Legislature passed a law imposing an excise tax of one one-hundredth of 1 per cent. of the authorized capital stock, the maximum amount of the tax not to exceed in any case $2,000, with a proviso that from the excise tax so assessed there might be deducted property taxes paid to cities and towns within the Commonwealth.

In 1907 the right to deduct taxes paid locally was abolished, and the rate was increased from one one-hundredth of 1 per cent. to one-fiftieth of 1 per cent., the maximum limit of $2,000 being retained. This method was followed until 1914, when an additional tax of one one-hundredth of 1 per cent. of the authorized capital stock in excess of $10,000,000 was imposed. So that as the law stands to-day a foreign corporation pays taxes locally upon its real estate, machinery and merchandise, an excise tax of one-fiftieth of 1 per cent. of its authorized capital stock, and, if its authorized capital stock exceeds $10,000,000, it pays an additional tax of one one-hundredth of 1 per cent. upon such excess authorized capital stock.

It will be noted that the merchandise of a foreign corporation, unlike that of a domestic business corporation, is subject to local taxation. The total amount of merchandise within the Commonwealth owned by foreign corporations in 1916 was assessed at substantially $33,000,000. The value of merchandise owned in Massachusetts by domestic business corporations in the same year, as shown by the returns filed with the Tax Commissioner, amounted to over $570,000,000. The ratio of domestic business corporations to foreign corporations is about

4 to 1, yet the ratio of merchandise owned by them, respectively, appears to be approximately 17 to 1. A very substantial amount of merchandise owned by foreign corporations would seem, therefore, to be escaping taxation. In an attempt to remedy this situation the Legislature of 1915 passed an act requiring foreign corporations to file with the Tax Commissioner each year sworn returns of the merchandise owned by them on April 1. The Tax Commissioner was then to place in the hands of local assessors the information thus obtained in order that the local assessors might levy taxes based thereon. Because, however, it was felt to be unjust to single out a certain class in the community and compel it to render sworn returns of its merchandise while partnerships and individuals were not under a like obligation, and also because it was hoped that a different system of taxing foreign corporations might be adopted by the Legislature in the near future, the operation of this law was twice suspended, and unless further suspended the law will become effective April 1, 1918.

Criticism has been directed against the present corporate excise tax on *authorized* capital stock, it being urged that a better and fairer method would be one based on issued and outstanding capital stock.

Undoubtedly, if the committee were to recommend merely slight modifications in the present law it would suggest the adoption of issued and outstanding, rather than authorized, capital stock as the basis of the tax, with a slight increase in the rate. But the committee is of opinion that, in so far as the situation permits, the tax on domestic business and foreign corporations should be uniform. From an economic viewpoint they are performing the same function, are not infrequently identical in the character and scope of their activities, competing in the same markets, and neither should have an advantage over the other in the matter of taxation. A system which treats both alike instinctively impresses the business men as just, and invites rather than repels new capital with its consequent industrial and commercial expansion.

The introduction of an income tax for domestic business corporations affords a good opportunity for establishing such a uniform system.

In general, the provisions of the accompanying bill relative to the taxation of foreign business corporations follow those of the proposed act relating to the taxation of domestic business corporations. There are, however, several differences made necessary by reason of the difference in their legal status.

In the first place, no minimum like the third minimum in the proposed domestic business corporation tax law, based upon taxable securities owned by a foreign corporation, is included. As dividends on shares of stocks of foreign corporations are taxable, there is little likelihood or danger that holders of foreign securities will incorporate under a foreign charter for the purpose of avoiding taxation.

Again, the second minimum here recommended is based on the proportion of the issued and outstanding capital stock employed within this Commonwealth, while in the case of domestic business corporations it is based upon the entire capital, surplus, undivided profits and indebtedness in excess of 200 per cent. of the capital stock issued and outstanding. Obviously, it is inequitable to tax a foreign corporation on its entire issued and outstanding capital stock when only a part of it may be employed in this Commonwealth. Were we to tax it in its entirety we would be levying a tax upon property deriving no benefit or protection from our laws and not subject to our jurisdiction.

Thirdly, since dividends on shares of foreign corporations owned by inhabitants of this State now taxable will remain taxable under this act, and dividends on stock of domestic corporations are exempt, the foreign corporation is given a credit equal to 5 per cent. of the dividends paid by such corporation during the calendar year to inhabitants of this Commonwealth. The proposed act exempts from local taxation the merchandise of foreign corporations, because it imposes a substantial tax upon their income which will be more than an equivalent of the present local taxes on merchandise. By so doing it places foreign corporations upon the same basis as domestic.

The committee realizes the difficulty of calculating with certainty the revenue the Commonwealth will derive under this proposed act; nevertheless, it is confident that the amount will exceed a million dollars, the sum, approximately, collected last

year from local taxes on the merchandise of foreign corporations and from the foreign corporation excise tax.

The committee believes that the method suggested for reimbursing cities and towns for the revenue they will lose by reason of the exemption of merchandise from local taxation — namely, the distribution among cities and towns of five-sixths of the tax collected under this act — will result in a gain of revenue for them.

The Taxation of Trust Companies.

The situation presented to the committee in regard to the corporate franchise tax of trust companies in Massachusetts showed the necessity of remedial legislation.

The Tax Commissioner, in his report of 1915, page 8, and in his report of 1916, pages 17 and 18, pointed out that a large proportion of trust companies paid no State tax at all. It appeared in evidence before the committee that in 1916 there were about one-half of the trust companies which paid no State tax. The total amount received from trust companies upon their corporate franchise tax in 1916 was approximately $475,000. About 38 trust companies paid absolutely no tax. Thirty trust companies paid approximately a total of $75,000, and the remaining $400,000 was distributed among 8 trust companies. In 1917 there were 91 trust companies doing business in the Commonwealth, and of this number about 60 paid little or no tax.

This situation is the result not of any evasion of the law but of the interpretation of the Supreme Judicial Court of the words "real estate" in considering the deductions to be made in estimating the corporate excess value. These words — "real estate" — the court held to include mortgages secured by real estate in the Commonwealth. Now, the funds which a trust company invests in mortgages are to a large proportion taken from its deposits, and are not taken out of the capital assets of the company. Nevertheless, although in determining the corporate excess value of a trust company for the purposes of taxation the deposits held by the trust company are not taken into consideration in estimating the market value, yet, by reason of the fact that mortgages are considered to be real estate,

the mortgages are deducted from the total. The result is that in the year 1917 the deduction in approximately 60 out of 90 cases was larger than the total, and there was left no corporate excess value to be taxed.

It appeared further to the committee that in some instances trust companies had taken an excessive amount of mortgages just prior to April 1, in order that use might be made of the mortgages for purposes of deduction; and that also some companies had transferred mortgages from their savings department to their trust department for the same purpose. It is only fair to say that these instances were more or less sporadic, and that they were used before the committee merely as pointing out possible methods of evasion which ought to be prevented.

It was suggested to the committee that a remedy for the situation would be to exclude mortgages from the deductions made under the guise of real estate. This proposition met with a great deal of opposition. The committee is clearly of the opinion that at the present time it would be unwise to interfere with the established method of deduction. Trust companies should be encouraged to hold mortgages rather than discouraged from doing so, and any such change would result in a great decrease in the amount of mortgages held by trust companies.

The obviously proper solution of the difficulty — to wit, a reasonable uniform rate of tax on bank stocks — cannot be attempted under our present Constitution until the word "proportional" is removed therefrom.

The committee recommends the passage of the bill annexed hereto, entitled An Act to amend the Law Relative to the Taxation of Trust Companies. This act provides for a minimum tax of two-fifths of 1 per cent. upon the total amount of the capital stock, surplus and undivided profits of trust companies, and would produce as revenue for the State from trust companies approximately $100,000 more each year than is now received. The bill further provides that the average amount of mortgages held by a trust company during the year shall be taken as the amount of mortgage deduction to which it may be entitled, rather than the exact amount owned or held on April 1 in any year.

By this act the unfortunate condition now existing by reason of which so many banking institutions escape payment of all State tax is eliminated. Every trust company will have to pay to the State at least a reasonable minimum tax. If the allowable deductions bring the tax below the minimum the trust company pays the minimum. The mortgage deduction is not interfered with and the trust companies are still encouraged to hold mortgages. Furthermore, the requirement that the average amount of mortgages held during the year shall determine the deduction removes the opportunity of evasion.

It might be well to add that this proposed measure has met with the approval of all parties interested, and that the committee, in recommending it, is justified in believing that there will be no opposition to it on the part of the trust companies.

The Taxation of Tangible Personal Property.

The committee has considered, particularly in connection with the taxation of consigned merchandise, the question of the taxation of tangible personal property. It finds that present methods of taxing such property are unsatisfactory, but is unable to devise any remedy that is practicable under the existing restrictions imposed by the State Constitution upon the classification of property. It therefore makes no recommendation concerning the taxation of tangible personality, and reports that, in its opinion, no material improvement in present methods is possible unless the constitutional powers of the Legislature are enlarged.

Respectfully submitted,

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Appendix A.

An Act imposing an Excise Tax upon the Franchises of Domestic Business Corporations.

Be it enacted, etc., as follows:

Section 1. The provisions of Part III of chapter four hundred and ninety of the acts of the year nineteen hundred and nine and acts in amendment thereof and in addition thereto, so far as they apply to the taxation of corporations organized under the laws of this commonwealth to which the provisions of chapter four hundred and thirty-seven of the acts of the year nineteen hundred and three and acts in amendment thereof and in addition thereto are applicable, are hereby repealed, except in so far as they are specifically made applicable by this act. Every such corporation, hereinafter called domestic business corporation, shall be subject to an excise tax on its corporate franchise, which shall be levied by the tax commissioner in the manner hereinafter provided.

Section 2. In the year nineteen hundred and eighteen, and in each year thereafter, there shall be levied as an excise upon the corporate franchise of every domestic business corporation a tax at the rate of five per cent of the net income, as hereinafter defined, received by such corporation during the previous calendar year from business carried on within this commonwealth. Such tax shall be levied by the tax commissioner in the manner hereinafter prescribed.

Section 3. The excise tax, provided by section two of this act, upon the corporate franchise of any domestic business corporation shall in no case be less than the greatest of the three amounts (*a*), (*b*), or (*c*) herein stated: —

(*a*) An amount equal to five tenths of one per cent of the fair cash value of the tangible personal property, other than

machinery, owned by such corporation and not located outside this commonwealth: *provided*, that in determining the fair cash value of such tangible personal property the average amount of value for the year shall be taken to be the fair cash value thereof, and that such average amount of value shall be determined in such manner as the tax commissioner shall deem just.

(*b*) An amount equal to one tenth of one per cent of the amount of such corporation's issued and outstanding capital stock, surplus and undivided profits, on the last day of the previous calendar year, and of the average amount of such corporation's indebtedness during such year, in excess of two hundred per cent of such amount of issued and outstanding capital stock.

(*c*) An amount equal to three tenths of one per cent of the fair cash value of any securities the interest and dividends from which, if received by an inhabitant of this commonwealth, would be taxable under the provisions of chapter two hundred and sixty-nine of the acts of the year nineteen hundred and sixteen and acts in amendment thereof and in addition thereto.

SECTION 4. The net income of a domestic business corporation taxable under section two of this act shall be the gross income received from all sources in the previous calendar year, less the following deductions: —

(*a*) The ordinary and necessary expenses paid within the year in the maintenance and operation of its business and properties, including rentals or other payments required to be made as a condition to the continued use or possession of property in which such corporation has not taken or is not taking title, or in which it has no equity: *provided*, that no deduction shall be made for any expenditure for additions to property, permanent improvements, or betterments.

(*b*) A reasonable allowance for the depreciation and obsolescence of property within the year, based upon the cost of such property and its estimated life, and for the depletion within the year of wasting assets owned by the corporation: *provided*, that no such allowance shall be made unless it is actually charged off within the year; and *provided, further*, that, in the case of property acquired prior to January first, nineteen hundred and seventeen, such allowance shall be based upon the fair cash value as of that date; and *provided, further*, that when such allowance shall equal the cost of such property or wasting assets, or, in case of such property acquired prior to January first, nineteen hundred and seventeen, shall equal the fair cash value of such property as of that date, no further allowance for depreciation, obsolescence, or depletion shall be made; and *provided, further*, that with the approval of the tax commissioner such corporation may, in lieu of the aforesaid allowance for depreciation and obsolescence, be allowed to deduct actual expenses of replacement and extraordinary repairs, and with such approval may in any year defer such deductions in whole or in part to one or more subsequent years.

(*c*) All taxes paid within the year to the United States, or to any other nation, or to any state, county, city, town, or other taxing district, except taxes due under this act and assessments for benefits.

(*d*) Interest paid within the year on indebtedness of such corporation: *provided*, that such deduction for interest shall not exceed the interest upon an amount of indebtedness fifty per cent in excess of the amount of the issued and outstanding capital stock, surplus, and undivided profits of such corporation; *provided, however*, that in the case of indebtedness wholly secured by property collateral, tangible or intangible, the subject of sale or hypothecation in the ordinary business of such corporation, as dealer only in such property collateral, or as lender of the funds thereby procured, the interest paid upon such indebtedness may be deducted up to an amount of such indebtedness not exceeding the value of such property collateral.

(*e*) Losses from the sale within the year of capital assets, and losses sustained within the year by fire, theft or other casualty, or amounts paid within the year on account of claims in law or equity, when not compensated by insurance or otherwise: *provided*, that no deduction shall be made for any such losses or payments as have had the effect of decreasing the inventory used in determining the taxable income of such corporation.

(*f*) The amount of any debts receivable arising from the conduct of the business of such corporation subsequent to December thirty-first, nineteen hundred and sixteen, determined by such corporation to be worthless and actually

charged off within the year: *provided*, that no deduction shall be made for debts receivable as income unless they have been included as income in a return made under this act.

(*g*) An amount equal to five per cent of the assessed value of the tangible property, real and personal, owned by such corporation within and without this commonwealth, upon which a property tax has been paid within the year. In case such assessed value is by law directed to be placed at a fractional part of the true value, the tax commissioner shall increase in due proportion the deduction herein authorized. In case any such tangible property located outside of this commonwealth is actually taxed in respect of its income and not in respect of its capital value by the state in which it is located, the tax commissioner may determine its value in such manner as he may deem just, and may allow a deduction of an amount equal to five per cent of the value so determined.

(*h*) Interest or dividends which are exempt from taxation under section two of chapter two hundred and sixty-nine of the acts of the year nineteen hundred and sixteen, and income derived from forest lands classified under chapter five hundred and ninety-eight of the acts of the year nineteen hundred and fourteen.

SECTION 5. In case a domestic business corporation carries on business outside this commonwealth, the tax commissioner shall determine in the following manner the proportion of the net income received from business carried on within this commonwealth.

(*a*) In the case of a manufacturing corporation two thirds of the net income shall be apportioned to the state or states in which manufacturing operations are carried on, and one third shall be apportioned to the state or states in which such corporation owns or rents premises for the sale of its products. If manufacturing operations are carried on in two or more states, the net income apportioned in respect of such operations shall be divided between such states in proportion to the amount of value of the products manufactured in each such state; and if such premises for the sale of products are owned or rented in two or more states, the net income apportioned in respect of such premises shall be divided between such states in proportion to the gross receipts in each such state.

(*b*) In the case of a mercantile corporation one-half of the net income shall be apportioned to the state or states in which the tangible property of such corporation is located, in proportion to the average amount of value of such property in each such state, and one-half shall be apportioned to the state or states in which such corporation owns or rents premises for the transaction of business, in proportion to the gross receipts of such corporation in each such state.

(*c*) In the case of a corporation carrying on both mercantile and manufacturing business, the net income from each class of business shall be apportioned, as nearly as may be, according to the rules laid down in (*a*) and (*b*).

(*d*) In the case of any other kind of corporation there shall be deducted from the total net income of such corporation a proportion corresponding to the proportion which the gross receipts of such corporation from business carried on outside the commonwealth in places where such corporation owns or rents premises for the transaction of business bears to the total gross receipts of such corporation.

SECTION 6. Corporations which customarily estimate their income and expenditure on a basis other than that of actual cash receipts and disbursements may, with the approval of the tax commissioner, compute upon a similar basis their income taxable under this act, in which case all the provisions of this act shall be construed to permit accounting upon such basis. Corporations which customarily estimate their income and expenditure on the basis of an established fiscal year instead of on that of the calendar year, may, with the approval of the tax commissioner and subject to such rules and regulations as he may establish, return their income taxable under this act, and report other information required by this act, on the basis of such fiscal year in lieu of that of the calendar year. In determining the gains or losses realized from the sale of capital assets, the value on January first, nineteen hundred and seventeen, of such property owned on that date shall be the basis of determination, and in case property is acquired after January first, nineteen hundred and seventeen, the value on the date that it is acquired shall be the basis of determination.

SECTION 7. On or before the first day of March in every year every domestic business corporation shall file with the tax commissioner, under oath of its treasurer, a return of its net income during the previous calendar year, which return shall also set forth such other information as may be reasonably required for the enforcement of this act. Such return shall be made in such form as the tax commissioner shall from time to time prescribe, and shall be open only to the inspection of the tax commissioner, his deputies, clerks, and assistants, and such other officers of the commonwealth as may have occasion to inspect it for the purpose of assessing or collecting taxes. Whoever discloses to any unauthorized person any information contained in any such return, other than the name and address of the corporation filing it, except in proceedings to collect the tax or by proper judicial order, shall be punished by a fine not exceeding one thousand dollars. Returns made under this section shall be preserved for two years, and thereafter until the tax commissioner orders them to be destroyed.

SECTION 8. The tax commissioner shall determine from the returns required by this act, and from any other information, the income of every domestic business corporation, and shall assess thereon the tax herein provided; but he shall not determine the income of any such corporation which has filed a return within the time prescribed by law to be in excess of the income shown by such return, without notifying such corporation and giving an opportunity to explain the apparent incorrectness of such return. For the purpose of verifying any return made pursuant to this act the tax commissioner may, within two years after the date when such return was due, if he has reason to believe the return to be insufficient or incorrect, direct by special authorization a deputy or other agent to verify the return; and for the purpose of such verification the books and papers of the corporation shall be open to such examining officer and his assistants, or shall be produced for the purpose upon a summons which the tax commissioner, or such examining officer, is hereby authorized to issue. Any officer of the corporation which made the return may be examined by the tax commissioner, or by such examining officer, under oath.

If the tax commissioner discovers from the verification of a return filed under this act, or otherwise, that the full amount of any tax due under this act has not been assessed, he may, at any time within two years after the first day of September of the year in which such assessment should have been made, assess the same, first giving notice to the corporation so to be assessed of his intention; and a representative of such corporation shall thereupon have an opportunity within ten days after such notification to confer with the tax commissioner as to the proposed assessment. After the expiration of ten days from such notification the tax commissioner shall assess the amount of such tax remaining due to the commonwealth, and shall give notice to the corporation so assessed. Any tax so assessed shall be payable fourteen days after the date of such notice; and the provisions of this act concerning the abatement and collection of taxes shall be applicable to any tax so assessed.

In case any corporation files a fraudulent return under this act, the tax commissioner shall assess upon such corporation an additional tax equal to the full amount of tax which he shall find to be due or to have been due, which additional tax shall be in addition to the other penalties provided by this act.

In determining the net income of corporations taxable under this act the tax commissioner may use, in such manner and to such extent as he may deem desirable, the services of the income tax deputy and such deputy's clerical and other assistants. The tax commissioner shall also make, from time to time, such rules and regulations, not inconsistent with the provisions of this act, as he may deem necessary for carrying out its provisions.

Whenever the tax commissioner shall receive notice of the abatement of the taxes of any domestic business corporation, as provided in section eighty-four of Part I of chapter four hundred and ninety of the acts of the year nineteen hundred and nine and acts in amendment thereof and in addition thereto, he shall forthwith assess upon such corporation any portion of any tax that would have been due under this act, if the valuation established by such abatement had been adopted by him when making the original assessment upon the income of such corporation, which amount of tax shall be paid and collected as an addition to the corporate franchise tax next assessed and levied upon such corporation.

The tax commissioner shall also, whenever he has reason to believe that the real estate or machinery of any domestic business corporation has been assessed in any city or town within this commonwealth for more than its fair cash value, make an appraisal of such real estate and machinery; and the value determined by such appraisal shall be conclusive in the determination of the deduction authorized by paragraph (*g*) of section four of this act, and such corporation shall be entitled to an abatement under the provisions of sections seventy-two, seventy-three, seventy-four, seventy-five, eighty-one, and eighty-two of Part I of chapter four hundred and ninety of the acts of the year nineteen hundred and nine and acts in amendment thereof and in addition thereto, provided it has filed the list required by section seventy-three of such Part I of such chapter.

SECTION 9. Except as provided by section eight of this act, the tax commissioner shall annually, as soon as may be after the first Monday of August in every year, give notice to the treasurer of each domestic business corporation of the amount of any tax levied upon such corporation, under this act; and shall give notice to such treasurer of the date upon which such sum is payable and of the time within which such corporation may apply for a correction of such tax. Failure to receive such notice shall not affect the validity of such tax.

SECTION 10. The penalties provided by sections fifty-eight and fifty-nine, and the charge for interest imposed by section sixty of Part III of chapter four hundred and ninety of the acts of the year nineteen hundred and nine and acts in amendment thereof and in addition thereto, for failure to comply with the provisions of such Part III of such chapter, shall, so far as apt, be applicable to any domestic business corporation which fails to comply with the provisions of this act; and such penalties and interest may be recovered in the manner provided by section sixty-two of such Part II of such chapter.

SECTION 11. Within ten days of the date upon which the notice provided by section nine of this act is sent to any domestic business corporation, such corporation may make

application to the tax commissioner for the correction of any tax assessed under this act. Any party aggrieved by the decision of the tax commissioner upon such application may, within ten days after notice of such decision, appeal therefrom by filing a complaint with the clerk of the board of appeal provided for by section sixty-eight of Part III of chapter four hundred and ninety of the acts of the year nineteen hundred and nine. If, upon a hearing, the board of appeal finds that the party making an appeal is entitled to any abatement from any tax assessed under this act, the board shall make such abatement as it sees fit. The decision of the board of appeal shall be final and conclusive, and shall be communicated to the petitioner and the tax commissioner within five days after the decision is made. If the tax appealed from has been paid, the treasurer and receiver-general shall repay to the petitioner the amount of any abatement and interest from the time of payment, upon presentation to him by the petitioner of the notice of the decision of the board.

SECTION 12. Any party aggrieved by the refusal of the tax commissioner to abate in whole or in part, under the provisions of the preceding section, a tax assessed upon the provisions of this act may, instead of pursuing the remedy provided in the preceding section, appeal from such refusal by filing a complaint against the tax commissioner in the superior court for the county in which such party has its principal place of business, within thirty days after the notice by the tax commissioner of his decision in accordance with the preceding section. An order of notice shall be issued by said court and served upon the tax commissioner within such time as the court shall direct, and the subsequent proceedings shall be conducted in accordance with the provisions of sections seventy-seven to eighty, inclusive, of Part I of chapter four hundred and ninety of the acts of the year nineteen hundred and nine, and acts in amendment thereof and in addition thereto; but if the complainant was subject to taxation under this act, and did not file a return within the time prescribed by law, it shall not be entitled to have any part of its tax abated by the court, unless the court finds that it had good cause for its delay, or the tax commissioner had previously so found. If an abatement is

granted, the amount thereof shall be repaid to the complainant by the treasurer and receiver-general, with interest at the rate of six per cent per annum from the time when the tax was paid, and costs.

The remedies provided by sections eleven and twelve hereof shall be exclusive, whether or not the tax is wholly illegal.

SECTION 13. Taxes levied under this act shall be payable to the treasurer and receiver-general. Except as provided in section eight such taxes shall be payable within thirty days after the date of the notice required by section nine, but not before the twentieth of October. Such taxes remaining unpaid for ten days after notice given through the mail by the treasurer and receiver-general to the treasurer or other financial agent of any domestic business corporation that any such tax is due and unpaid shall be collected in the manner provided by section sixty-nine of Part III of chapter four hundred and ninety of the acts of the year nineteen hundred and nine and acts in amendment thereof and in addition thereto for taxes levied upon corporations by such chapter, or under the provisions of sections sixty-one, sixty-two, and sixty-three of Part III of such chapter.

SECTION 14. Shares in the capital stock of domestic business corporations shall be exempt from taxation under the provisions of Part I of chapter four hundred and ninety of the acts of the year nineteen hundred and nine and acts in amendment thereof and in addition thereto.

SECTION 15. One-sixth of every tax paid by any domestic business corporation under this act shall be retained by the commonwealth. The remainder shall be distributed, credited, and paid to the city or town of the commonwealth where the business of such corporation is carried on. If such corporation maintains an office, store, or factory in more than one city or town of the commonwealth, such remainder shall be distributed, credited, and paid to such cities or towns in proportion to the value of the tangible property of such corporation in each of such cities or towns on the first day of April, or such other day as the tax commissioner shall determine, which value shall be determined in such manner as the tax

commissioner shall deem just: *provided*, that if such corporation does not conduct its business in Massachusetts, and does not own any tangible property in any city or town of the commonwealth, other than furniture and equipment reasonably necessary for the use of the clerk or other executive officers of such corporation, all of such tax shall be retained by the commonwealth.

SECTION 16. If any part, section, or subdivision of this act shall be declared unconstitutional, the validity of the remaining parts of this act shall not be affected thereby.

SECTION 17. This act shall take effect upon its passage.

Appendix B.

An Act imposing an Excise Tax on Foreign Corporations.

Be it enacted, etc., as follows:

Section 1. The provisions of Part III of chapter four hundred and ninety of the acts of the year nineteen hundred and nine and acts in amendment thereof and in addition thereto, so far as they apply to the taxation of foreign corporations to which the provisions of chapter four hundred and thirty-seven of the acts of the year nineteen hundred and three and acts in amendment thereof and in addition thereto are applicable, are hereby repealed, except in so far as they are specifically made applicable by this act. The provisions of chapter seven hundred and twenty-four of the acts of the year nineteen hundred and fourteen are also repealed. Every such corporation, hereinafter called foreign business corporation, shall be subject to an excise tax which shall be levied by the tax commissioner in the manner hereinafter provided.

Section 2. In the year nineteen hundred and eighteen and in each year thereafter there shall be levied on every foreign corporation a tax at the rate of five per cent of the net income, as hereinafter defined, received by such corporation during the previous calendar year from business carried on within this commonwealth. The net income of a foreign corporation taxable under this section shall be the gross income received from all sources in the previous calendar year less the following deductions:—

(*a*) The ordinary and necessary expenses paid within the year in the maintenance and operation of its business and properties, including rentals or other payments required to be made as a condition to the continued use or possession of property in which such corporation has not taken or is not taking title, or in which it has no equity: *provided,* that no deduction shall be made for any expenditure for additions to property, permanent improvements, or betterments.

(*b*) A reasonable allowance for the depreciation and obsolescence of property within the year, based upon the cost of such property and its estimated life, and for the depletion within the year of wasting assets owned by the corporation: *provided,* that no such allowance shall be made unless it is actually charged off within the year; and *provided, further,* that, in the case of property acquired prior to January first, nineteen hundred and seventeen, such allowance shall be based upon the fair cash value as of that date; and *provided, further,* that when such allowance shall equal the cost of such property or wasting assets, or, in case of such property acquired prior to January first, nineteen hundred and seventeen, shall equal the fair cash value of such property as of that date, no further allowance for depreciation, obsolescence, or depletion shall be made; and *provided, further,* that with the approval of the tax commissioner such corporation may, in lieu of the aforesaid allowance for depreciation and obsolescence, be allowed to deduct actual expenses of replacement and extraordinary repairs, and with such approval may in any year defer such deductions in whole or in part to one or more subsequent years.

(*c*) All taxes paid within the year to the United States, or to any other nation, or to any state, county, city, town, or other taxing district, except taxes due under this act and assessments for benefits.

(*d*) Interest paid within the year on indebtedness of such corporation: *provided,* that such deduction for interest shall not exceed the interest upon an amount of indebtedness fifty per cent in excess of the amount of the issued and outstanding capital stock, surplus and undivided profits of such corporation; *provided, however,* that in the case of indebtedness wholly secured by property collateral, tangible or intangible, the subject of sale or hypothecation in the ordinary business of such corporation, as dealer only in such property collateral, or as lender of the funds thereby procured, the interest paid upon such indebtedness may be deducted up to an amount of such indebtedness not exceeding the value of such property collateral.

(*e*) Losses from the sale within the year of capital assets and losses sustained within the year by fire, theft or other casualty, or amounts paid within the year on account of

claims in law or equity, when not compensated by insurance or otherwise: *provided*, that no deduction shall be made from any such losses or payments as have had the effect of decreasing the inventory used in determining the taxable income of such corporation.

(*f*) The amount of any debts receivable arising from the conduct of the business of such corporation subsequent to December thirty-first, nineteen hundred and sixteen, determined by such corporation to be worthless and actually charged off within the year: *provided*, that no deduction shall be made for debts receivable as income unless they have been included as income in a return made under this act.

(*g*) An amount equal to five per cent of the assessed value of the tangible property, real and personal, owned by such corporation within or without this commonwealth, upon which a property tax has been paid within the year. In case such assessed value is by law directed to be placed at a fractional part of the true value, the tax commissioner shall increase in due proportion the deduction herein authorized. In case any such tangible property located outside of this commonwealth is actually taxed in respect of its income and not in respect of its capital value by the state in which it is located, the tax commissioner may determine its value in such manner as he may deem just, and may allow a deduction of an amount equal to five per cent of the value so determined.

(*h*) Interest or dividends which are exempt from taxation under section two of chapter two hundred and sixty-nine of the acts of the year nineteen hundred and sixteen, and income derived from forest lands classified under chapter five hundred and ninety-eight of the acts of the year nineteen hundred and fourteen.

SECTION 3. In case a foreign corporation carries on business outside this commonwealth, the tax commissioner shall determine in the following manner the proportion of the net income received from business carried on within this commonwealth: —

(*a*) In the case of a manufacturing corporation two thirds of the net income shall be apportioned to the state or states in which manufacturing operations are carried on,

and one third shall be apportioned to the state or states in which such corporation owns or rents premises for the sale of its products. If manufacturing operations are carried on in two or more states, the net income apportioned in respect of such operations shall be divided between such states in proportion to the amount of value of the products manufactured in each such state; and if such premises for the sale of products are owned or rented in two or more states, the net income apportioned in respect of such premises shall be divided between such states in proportion to the gross receipts in each such state.

(*b*) In the case of a mercantile corporation one half of the net income shall be apportioned to the state or states in which the tangible property of such corporation is located, in proportion to the average amount of value of such property in each such state, and one half shall be apportioned to the state or states in which such corporation owns or rents premises for the transaction of business, in proportion to the gross receipts of such corporation in each such state.

(*c*) In the case of a corporation carrying on both mercantile and manufacturing business, the net income from each class of business shall be apportioned as nearly as may be, according to the rules laid down in (*a*) and (*b*).

(*d*) In the case of any other kind of corporation there shall be deducted from the total net income of such corporation a proportion corresponding to the proportion which the gross receipts of such corporation from business carried on outside the commonwealth in places where such corporation owns or rents premises for the transaction of business bears to the total gross receipts of such corporation.

SECTION 4. The excise tax provided by section two of this act to be paid by any foreign corporation shall in no case be less than the greater of the two amounts (*a*) or (*b*) herein stated: —

(*a*) An amount equal to five tenths of one per cent of the fair cash value of the tangible personal property, other than machinery, owned by such corporation and located in this commonwealth: *provided*, that in determining the fair cash value of such tangible personal property the average amount of value for the year shall be taken to be the fair cash value

thereof, and that such average amount of value shall be determined in such manner as the tax commissioner shall deem just.

(*b*) An amount equal to one tenth of one per cent of the amount of such corporation's issued and outstanding capital stock employed within this commonwealth during the previous calendar year. Such amount of capital stock shall be deemed to be a proportion of the total issued and outstanding capital stock corresponding to the proportion of the net income received by such corporation from business carried on within this commonwealth, as determined under the provisions of section three of this act.

SECTION 5. After determining the amount of tax due from any foreign corporation under the provisions of sections two and three of this act, the tax commissioner shall then credit such corporation with a sum equal to five per cent of the dividends paid by such corporation, during the previous calendar year, to inhabitants of this commonwealth, and the amount then remaining due shall be the amount of tax to be levied upon such corporation: *provided*, that such tax to be levied shall in no case be less than the minimum tax provided by section four of this act.

SECTION 6. Corporations which customarily estimate their income and expenditure on a basis other than that of actual cash receipts and disbursements may, with the approval of the tax commissioner, compute upon a similar basis their income taxable under this act, in which case all the provisions of this act shall be construed to permit accounting upon such basis. Corporations which customarily estimate their income and expenditure on the basis of an established fiscal year instead of on that of the calendar year, may, with the approval of the tax commissioner and subject to such rules and regulations as he may establish, return their income taxable under this act, and report other information required by this act, on the basis of such fiscal year in lieu of that of the calendar year. In determining the gains or losses realized from the sale of capital assets, the value on January first, nineteen hundred and seventeen, of such property owned on that date shall be the basis of determination, and in case property is acquired after January first, nineteen hundred and seventeen, the value on the date that it is acquired shall be the basis of determination.

SECTION 7. On or before the first day of March in every year every foreign corporation shall file with the tax commissioner, under oath of its treasurer, a return of its net income during the previous calendar year, which return shall also set forth such other information as may be reasonably required for the enforcement of this act. Such return shall be made in such form as the tax commissioner shall from time to time prescribe, and shall be open only to the inspection of the tax commissioner, his deputies, clerks and assistants, and such other officers of the commonwealth as may have occasion to inspect it for the purpose of assessing or collecting taxes. Whoever discloses to any unauthorized person any information contained in any such return, other than the name and address of the corporation filing it, except in proceedings to collect the tax or by proper judicial order, shall be punished by a fine not exceeding one thousand dollars. Returns made under this section shall be preserved for two years, and thereafter until the tax commissioner orders them to be destroyed.

SECTION 8. The tax commissioner shall determine from the returns required by this act, and from any other information, the income of every foreign corporation, and shall assess thereon the tax herein provided; but he shall not determine the income of any such corporation which has filed a return within the time prescribed by law to be in excess of the income shown by such return, without notifying such corporation and giving an opportunity to explain the apparent incorrectness of such return. For the purpose of verifying any return made pursuant to this act the tax commissioner may, within two years after the date when such return was due, if he has reason to believe the return to be insufficient or incorrect, direct by special authorization a deputy or other agent to verify the return; and for the purpose of such verification the books and papers of the corporation shall be open to such examining officer and his assistants, or shall be produced for the purpose upon a summons which the tax commissioner, or such examining

officer, is hereby authorized to issue. Any officer of the corporation which made the return may be examined by the tax commissioner or by such examining officer, under oath.

If the tax commissioner discovers from the verification of a return filed under this act, or otherwise, that the full amount of any tax due under this act has not been assessed, he may, at any time within two years after the first day of September of the year in which such assessment should have been made, assess the same, first giving notice to the corporation so to be assessed of his intention; and a representative of such corporation shall thereupon have an opportunity within ten days after such notification to confer with the tax commissioner as to the proposed assessment. After the expiration of ten days from such notification the tax commissioner shall assess the amount of such tax remaining due to the commonwealth, and shall give notice to the corporation so assessed. Any tax so assessed shall be payable fourteen days after the date of such notice; and the provisions of this act concerning the abatement and collection of taxes shall be applicable to any tax so assessed.

In case any corporation files a fraudulent return under this act, the tax commissioner shall assess upon such corporation an additional tax equal to the full amount of tax which he shall find to be due or to have been due, which additional tax shall be in addition to the other penalties provided by this act.

In determining the net income of corporations taxable under this act the tax commissioner may use, in such manner and to such extent as he may deem desirable, the services of the income tax deputy and such deputy's clerical and other assistants. The tax commissioner shall also make, from time to time, such rules and regulations, not inconsistent with the provisions of this act, as he may deem necessary for carrying out its provisions.

Whenever an abatement is finally made to any foreign corporation upon any tax assessed by the assessors of any city or town upon property of such corporation subject to taxation in such city or town, such assessor shall forthwith notify the tax commissioner, in such form as he may prescribe, concerning such abatement; and the tax commissioner upon receipt of such notice shall forthwith assess

upon such corporation any portion of any tax that would have been due under this act, if the valuation established by such abatement had been adopted by him when making the original assessment upon the income of such corporation, which amount of tax shall be paid and collected as an addition to the corporate franchise tax next assessed and levied upon such corporation. The tax commissioner shall also, whenever he has reason to believe that the real estate or machinery of any foreign corporation has been assessed in any city or town within this commonwealth for more than its fair cash value, make an appraisal of such real estate and machinery; and the value determined by such appraisal shall be conclusive in the determination of the deduction authorized by paragraph (*g*) of section four of this act, and such corporation shall be entitled to an abatement under the provisions of sections seventy-two, seventy-four, seventy-five, eighty-one, and eighty-two of Part I of chapter four hundred and ninety of the acts of the year nineteen hundred and nine and acts in amendment thereof and in addition thereto: *provided*, that it has filed the list required by section seventy-three of such Part I of such chapter.

SECTION 9. Except as provided by section eight of this act, the tax commissioner shall annually, as soon as may be after the first Monday of August in every year, give notice to the treasurer or other agent of each foreign corporation of the amount of any tax levied upon such corporation, under this act; and shall give notice to such treasurer or agent of the date upon which such sum is payable and of the time within which such corporation may apply for a correction of such tax. Failure to receive such notice shall not affect the validity of such tax.

SECTION 10. The penalties provided by sections fifty-eight and fifty-nine, and the charge for interest imposed by section sixty of Part III of chapter four hundred and ninety of the acts of the year nineteen hundred and nine and acts in amendment thereof and in addition thereto, for failure to comply with the provisions of such Part III of such chapter, shall, so far as apt, be applicable to any foreign corporation which fails to comply with the provisions of

this act; and such penalties and interest may be recovered in the manner provided by section sixty-two of such Part II of such chapter.

SECTION 11. Within ten days of the date upon which the notice provided by section nine of this act is sent to any foreign corporation, such corporation may make application to the tax commissioner for the correction of any tax assessed under this act. Any party aggrieved by the decision of the tax commissioner upon such application may, within ten days after notice of such decision, appeal therefrom by filing a complaint with the clerk of the board of appeal provided for by section sixty-eight of Part III of chapter four hundred and ninety of the acts of the year nineteen hundred and nine. If, upon a hearing, the board of appeal finds that the party making an appeal is entitled to any abatement from any tax assessed under this act, the board shall make such abatement as it sees fit. The decisions of the board of appeal shall be final and conclusive, and shall be communicated to the petitioner and the tax commissioner within five days after the decision is made. If a tax appealed from has been paid the treasurer and receiver-general shall repay to the petitioner the amount of any abatement and interest from the time of payment upon presentation to him by the petitioner of the notice of the decision of the board.

SECTION 12. Any party aggrieved by the refusal of the tax commissioner to abate in whole or in part, under the provisions of the preceding section, a tax assessed upon the provisions of this act may, instead of pursuing the remedy provided in the preceding section, appeal from such refusal by filing a complaint against the tax commissioner in the superior court for the county in which such party has its principal place of business within this commonwealth, within thirty days after the notice by the tax commissioner of his decision in accordance with the preceding section. An order or notice shall be issued by said court and served upon the tax commissioner within such time as the court shall direct, and the subsequent proceedings shall be conducted in accordance with the provisions of sections seventy-seven to eighty, inclusive, of Part I of chapter four hundred and ninety of

the acts of the year nineteen hundred and nine and acts in amendment thereof and in addition thereto; but if the complainant was subject to taxation under this act and did not file a return within the time prescribed by law it shall not be entitled to have any part of its tax abated by the court, unless the court finds that it has good cause for its delay, or the tax commissioner had previously so found. If an abatement is granted, the amount thereof shall be repaid to the complainant by the treasurer and receiver-general, with interest at the rate of six per cent per annum from the time the tax was paid, and costs. The remedies provided by sections eleven and twelve hereafter shall be exclusive, whether or not the tax is wholly illegal.

SECTION 13. Taxes levied under this act shall be payable to the treasurer and receiver-general. Except as provided in section eight such taxes shall be payable within thirty days after the date of the notice required by section nine, but not before the twelfth of October. Such taxes remaining unpaid for ten days after notice given through the mail by the treasurer and receiver-general to the treasurer or other financial agent of any foreign corporation that any such tax is due and unpaid shall be collected in the manner provided by section sixty-nine of Part III of chapter four hundred and ninety of the acts of the year nineteen hundred and nine and acts in amendment thereof and in addition thereto for taxes levied upon corporations by such chapter, or under the provisions of sections sixty-one, sixty-two and sixty-three of Part III of such chapter.

SECTION 14. The tangible personal property, other than machinery, of foreign corporations shall be exempt from taxation under the provisions of Part I of chapter four hundred and ninety of the acts of the year nineteen hundred and nine, and acts in amendment thereof and in addition thereto. So much of section seventy-one of chapter four hundred and thirty-seven of the acts of the year nineteen hundred and three, and all acts in amendment thereof and in addition thereto, as relates to the taxation of merchandise owned by foreign corporations and situated in this commonwealth is hereby repealed. So much of section twenty-three of Part I of chapter four hundred and ninety of the acts of

the year nineteen hundred and nine and acts in amendment thereof and in addition thereto as relates to the taxation of the merchandise of foreign corporations is hereby repealed. Chapter one hundred and sixty-seven of the general acts of the year nineteen hundred and fifteen, as amended by chapter eighty-three of the acts of the year nineteen hundred and sixteen, and by chapter eighty-nine of the acts of the year nineteen hundred and seventeen, is hereby repealed.

SECTION 15. One sixth of every tax paid by any foreign corporation under this act shall be retained by the commonwealth. The remainder shall be distributed, credited, and paid to the city or town of the commonwealth where the business of such corporation is carried on. If such corporation maintains an office, store, or factory in more than one city or town of the commonwealth, such remainder shall be distributed, credited and paid to such cities or towns in proportion to the value of the tangible property of such corporation in each of such cities or towns on the first day of April, or such other day as the tax commissioner shall determine, which value shall be determined in such manner as the tax commissioner shall deem just: *provided*, that if such corporation does not own any tangible property in this commonwealth, other than furniture or office equipment and supplies, all of such tax shall be retained by the commonwealth.

SECTION 16. If any part, section, or subdivision of this act shall be declared unconstitutional the validity of the remaining parts of this act shall not be affected thereby.

SECTION 17. This act shall take effect upon its passage.

APPENDIX C.

AN ACT TO AMEND THE LAW RELATIVE TO THE TAXATION OF TRUST COMPANIES.

Be it enacted, etc., as follows:

SECTION 1. Section forty-three of Part III. of chapter four hundred and ninety of the acts of the year nineteen hundred and nine, as amended by section six of chapter one hundred and ninety-eight of the acts of the year nineteen hundred and fourteen, is hereby further amended by adding at the end thereof the following: — And the total amount of the tax to be paid by a trust company in any year upon the value of its corporate franchise shall amount to not less than two fifths of one per cent of the total amount of its capital stock, surplus and undivided profits at the time of said assessment as found by the tax commissioner, — so as to read as follows: —*Section 43.* — Every corporation subject to the provisions of section forty shall annually pay a tax upon its corporate franchise, after making the deductions provided for in section forty-one, at a rate equal to the average of the annual rates for three years preceding that in which such assessment is laid, the annual rate to be determined by an apportionment of the whole amount of money to be raised by taxation upon property in the commonwealth during the same year, as returned by the assessors of the several cities and towns under the provisions of section fifty-nine of Part I. after deducting therefrom the amount of tax assessed upon polls for the preceding year, as certified to the tax commissioner, upon the aggregate valuation of all cities and towns for the preceding year, as returned under sections fifty-nine and sixty of Part I.; but the said tax upon the value of the corporate franchise of a domestic business corporation, after making the deductions provided for in section forty-one, shall not exceed a tax levied at the rate aforesaid upon an amount, less said deductions, twenty per cent in excess of the value, as found by the tax commissioner, of the works, structures, real estate,

machinery, poles, underground conduits, wires and pipes, and merchandise, and of securities which if owned by a natural person resident in this commonwealth would be liable to taxation; and the total amount of the tax to be paid by such corporation in any year upon its property locally taxed in this commonwealth and upon the value of its corporate franchise shall amount to not less than one tenth of one per cent of the market value of its capital stock at the time of said assessment as found by the tax commissioner; and the total amount of the tax to be paid by a trust company in any year upon the value of its corporate franchise shall amount to not less than two fifths of one per cent of the total amount of its capital stock, surplus and undivided profits at the time of said assessment as found by the tax commissioner.

SECTION 2. In determining the value of the corporate franchise of a trust company for purposes of taxation, that part of its real estate represented by its interest as mortgages in taxable real estate within the commonwealth shall, for purposes of deduction under clause fourth of section forty-one of Part III. of chapter four hundred and ninety of the acts of the year nineteen hundred and nine, as amended by section six of chapter one hundred and ninety-eight of the acts of the year nineteen hundred and fourteen, be regarded as the average amount of value of such part of its real estate for the year for which the tax on the corporate franchise is levied, such average amount of value to be determined in such manner as the tax commissioner shall deem just.

SECTION 3. This act shall take effect as of April first, nineteen hundred and eighteen.

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END OF
TITLE